

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Request to Reconsider Final Rejection As Premature - MPEP § 706.07(d)

Applicant respectfully requests reconsideration of the appropriateness of the final rejection. MPEP § 706.7(a) provides that a "second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement ...". In the present instance, a new ground of rejection was entered under 35 USC § 112 as to dependent Claim 21. Applicant made no amendments to Claim 21 in the previous Response, nor could any of the amendments made to independent Claim 15, from which dependent Claim 21 ultimately depends, be construed as giving rise to the new rejection because the amendments did not introduce any "new apertures". Accordingly, because the rejection under 35 USC § 112 is a new ground of rejection that was not necessitated by any amendment made by Applicant, it was premature to make final the Office Action dated April 10, 2008. Reconsideration under MPEP § 706.07(c) and (d) is respectfully solicited.

REJECTIONS UNDER 35 USC § 112

Applicant has amended dependent Claim 21, as well as independent Claim 15 from which it depends, in a manner believed to overcome this rejection. Favorable reconsideration is respectfully solicited.

REJECTIONS UNDER 35 USC § 102

1. Claim 15, 3 and 16-21 stand rejected under 35 USC § 102(b) as being anticipated by Eichberger et al. (US 5,815,934). Applicant respectfully traverses this rejection, as it appears the Examiner fundamentally misunderstands the present claims, including independent Claim 15. In particular, the Examiner states:

“As to the recitation, *‘wherein said exhaust passage is configured so that the airflow directed into the exhaust passage flows...’* Examiner notes the term into is understood as the airflow going *into* the passage. Eichberger teaches this airflow is directed in a substantially upward direction because the airflow is coming from a lower location, i.e. the cutting drum is positioned below the exhaust passage therefore the airflow and debris from the cutting drum is directed in a substantially upward direction so as to facilitate removal of the debris via the exhaust passages.”

It is respectfully submitted that this characterization of Claim 15 is inconsistent with the well-established rules of claim interpretation. The antecedent basis for the reference to “the airflow” quoted in the above passage is found earlier in the claim, and is defined as the airflow produced by the airflow generator that is directed through the conduit into the exhaust passage. The reference to “the airflow” in the above-quoted claim passage does NOT include the debris created by the cutting action of the blade that is “ejected from the recess through the expulsion aperture into said exhaust passage”. Thus, Claim 15 clearly and unambiguously defines the terms (i) “the airflow” to mean the airflow emanating from the conduit that is produced by the airflow generator, and (ii) “debris” to mean the cutting debris emanating from within the recess that is produced by the cutting action of the cutting drum. The fact that the cited Eichberger et al. reference ejects debris from the cutting action of the blade in a substantially upward direction into the exhaust passage, does NOT anticipate nor

render obvious the claimed invention. The recited distinguishing feature of the present invention is that the airflow from the conduit is directed into the exhaust passage so that its flow is also “in a substantially upward direction” to entrain the debris and thereby facilitate its ejection from the body of the planer. In Eichberger et al., the airflow from conduit 30 is directed substantially horizontally and somewhat downwardly into exhaust passage 25 (as shown in Fig. 3), and then horizontally through exhaust passage 25 out one of exhaust apertures 26 or 27 (as shown in Fig. 5).

Applicant has further amended Claim 15 to expressly recite “the airflow from the conduit” and further that the airflow from the conduit is directed into the exhaust passage “through a port”, and that the airflow directed into the exhaust passage flows in a substantially upward direction “from said port to said first and second exhaust apertures ...”.

Thus, Claim 15, as well as those claims dependent thereon, clearly and unequivocally patentably distinguish over the Eichberger et al. reference.

2. Claims 15, 3, 5-10 and 12-13 also stand rejected under 35 USC § 103 as being obvious over Maier (DE 35 42 263). As noted in the Remarks to the Amendment dated March 20, 2008, the Maier et al. is believed to be less relevant than Eichberger et al. because Maier et al. does not disclose an airflow generator for generating an airflow that is directed into the exhaust passage to facilitate the discharge of cutting debris through the exhaust apertures. The suggestion by the Examiner that item 30 in Maier et al. corresponds to the conduit recited in the present claim is misplaced. Item 30 in Maier et al. is described as a “deflection surface” of the pivotally mounted flap 21. Consequently, deflection surface 30 in Maier et al. corresponds to the curved surface 30

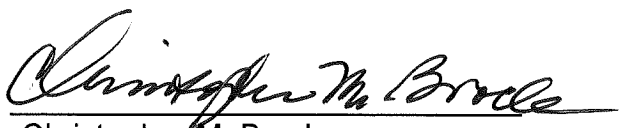
of deflector 26 in the present invention which directs the debris from the exhaust passage out through the exhaust aperture. The airflow conduit as defined in the present invention and recited in claim 15 comprises the airflow passageway between the airflow generator and the exhaust passage. There is no such passageway in Maier et al.

Thus, it is unclear how the disclosure in Maier et al. adds to the disclosure in Eichberger et al. with respect to the rejection of independent claim 15. Moreover, because Maier et al. is completely devoid of any airflow generator and conduit, it cannot possibly teach or suggest the distinctions between Eichberger et al. and the present invention discussed above.

Therefore, it is respectfully submitted that pending claims 3-10, 12-15, and 17-23 patentably distinguish the present invention over the cited art. The present application is therefore believed to be in condition for allowance. Favorable reconsideration is respectfully solicited.

Respectfully submitted,

Dated: July 10, 2008

By: 
Christopher M. Brock
Reg. No. 27313

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

CMB:bh